United Nations S/AC.44/2004/(02)/54

Security Council

Distr.: General
29 October 2004

Original: English

**Security Council Committee established pursuant to resolution 1540 (2004)**

## Note verbale dated 28 October 2004 from the Permanent Mission of New Zealand to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of New Zealand to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1540 (2004) and has the honour to refer to his note of 21 June 2004. In response to the Committee's request the New Zealand Permanent Mission has the honour to attach the report of New Zealand pursuant to paragraph 4 of resolution 1540 (2004) (see annex).

04-67491 (E) 210405

**Annex to the note verbale dated 28 October 2004 from the Permanent Mission of New Zealand to the United Nations addressed to the Chairman of the Committee**

**Report of New Zealand on the implementation of United Nations Security Council resolution 1540 (2004)**

## INTRODUCTION

The United Nations Security Council Resolution (UNSCR) 1540 calls upon all states to present a report no later than six months from the adoption of the resolution to the Committee of the Security Council on the steps taken or that are intended to be taken to implement the resolution. This report sets out New Zealand's legislation and New Zealand's policies in general which are relevant to the requirements of UNSCR 1540.

## OPERATIVE REQUIREMENTS OF 1540

**OP1. *Decides that* all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;**

- New Zealand's strong and consistent policy is that all weapons of mass destruction (WMD) should be eliminated, and that this elimination should be verified and enforced through robust legally binding multilateral disarmament instruments. New Zealand provides no support whatsoever to any entity - whether State or non-State actor - attempting to develop, acquire, manufacture, possess, transport, transfer or use WMD and their means of delivery.

- This is reflected in the prohibitions under New Zealand law which make it an offence to aid or abet any person in developing WMD. For example the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987[1] expressly makes it an offence to aid, abet or procure any person to manufacture, acquire, possess, or have control over any nuclear explosive device. This prohibition also applies extra-territorially to agents or servants of the Crown outside the New Zealand nuclear free zone[2].

- Similarly the Chemical Weapons (Prohibition) Act 1996[3] makes it an offence to assist any person to engage in any activity prohibited under the Convention on the

[1] Section 5 of the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987.

[2] Generally all of the land, territory, and inland waters within the territorial limits of New Zealand; and the internal waters of New Zealand; and the territorial sea of New Zealand; and the airspace above the areas specified in the Act.

[3] Section 6 of the Chemical Weapons (Prohibition) Act 1996.

Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the Chemical Weapons Convention)[4]. This prohibition also applies extra-territorially to any New Zealand citizen or person ordinarily resident in New Zealand or any other person on board any New Zealand ship or New Zealand aircraft.

- The New Zealand Crimes Act 1961 makes it an offence to aid or abet the commission of any offence under New Zealand legislation or to incite, counsel or procure any person to commit an offence.[5] Accordingly any form of support or assistance provided to non-State actors attempting to carry out the activities prohibited under New Zealand legislation relating to WMD would be an offence under the Crimes Act. New Zealand legislation proscribing relevant activities prohibited in UNSCR 1540 is covered below.[6]

- It should be noted that any non-State actor attempting[7] to carry out the prohibited activities under New Zealand legislation in relation to WMD (i.e. to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of deliver) commits an offence under New Zealand law.

**OP2. *Decides also* that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;**

- New Zealand already has legislation which gives effect to the Biological Weapons Convention, Chemical Weapons Convention and the Nuclear Non-Proliferation Treaty. The prohibitions in our legislation are consistent with, and enable us to meet, the prohibitions mandated under OP2 relating to the manufacture, acquisition, possession, development, transport, transfer or use of nuclear, chemical or biological weapons and their means of delivery.

- The New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987 (which implements the Nuclear Non-Proliferation Treaty) prohibits the:

[4] Article I.1 of the Chemical Weapons Convention prohibits State parties from developing, producing, acquiring, stockpiling or retaining chemical weapons or transferring chemical weapons to anyone.
[5] Section 66 of the Crimes Act 1961.
[6] Please refer to section of report under OP2.
[7] Section 72 of the Crimes Act 1961.

- manufacture, acquisition, possession, control of any nuclear explosive device,
- aiding, abetting or procuring any person to manufacture, acquire, possess, or have control over any nuclear explosive device, and
- transport ,stockpiling, storage, installation, or deployment of any nuclear explosive device.

- The New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987 (which also implements the Biological Weapons Convention) prohibits the manufacture, stationing, acquisition, or possession of or control over, any biological weapon. The prohibition applies to biological weapons and includes means of delivery and equipment.

- The Chemical Weapons (Prohibition) Act 1996 (which implements the Chemical Weapons Convention) prohibits the acquisition, stockpiling, retention or transfer of chemical weapons. The prohibition under the Chemical Weapons Act also applies to means of delivery. The Act more specifically makes it an offence to:

  - develop, produce, acquire, stockpile, or retain chemical weapons;
  - transfer, directly or indirectly, chemical weapons to another person;
  - use chemical weapons;
  - engage in any military preparations to use chemical weapons;
  - assist, encourage, or induce any person to engage in any activity prohibited to a State Party under the Chemical Weapons Convention;
  - import or export, without the consent of the Secretary of Foreign Affairs and Trade, any toxic chemical or precursor listed in the Schedules to the Act.

- The express prohibitions on aiding and abetting in the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987 and the Chemical Weapons (Prohibition) Act 1996; as well as general prohibitions on aiding and abetting the commission of any offence under New Zealand law, taken together, mean that assisting or acting as an accomplice to the prohibitions contained in this legislation would be an offence under New Zealand law. This meets the terms of OP2, which calls on States to implement effective laws to prohibit the support and assistance for non-state actors engaging in any of the prohibited activities listed in OP2.

- The section in the Crimes Act prohibiting attempts[8] would also make it an offence for non-State actors to attempt to carry out the prohibited activities under New Zealand legislation in relation to WMD. This is relevant to OP2, which calls on States to implement effective laws to prohibit non-state actors from attempting to engage in the prohibited activities outlined in OP2.

[8] Section 72 of The Crimes Act 1961.

- New Zealand's Terrorism Suppression Act[9] also prohibits the financing of terrorist acts. The prohibition on financing terrorists' acts is comprehensive and not, of course, limited to situations where terrorists might intend to use, or use, WMD. However these situations are covered too.

**OP3** *Decides* also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

**(a)** Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

**(b)** Develop and maintain appropriate effective physical protection measures;

- New Zealand has implemented legislation establishing controls over related materials[10]. The Radiation Protection Act 1965[11] prohibits (absent the Minister of Health's specific approval) the manufacture, sale, import, export, storage or transport of radioactive material.

- Section 13C of the Terrorism Suppression Act 2002[12] also prohibits the acquisition, possession and control of radioactive material if this will be used to commit an offence involving bodily injury, or the threat of violence, to any person. Section 13C is designed specifically to implement our obligation under Article 7 of the Convention on the Physical Protection of Nuclear Material (CPPNM) which prohibits the intentional commission of certain activities involving nuclear material; theft or robbery of nuclear material; fraudulently obtaining nuclear material; and threatening to use nuclear material.

- The New Zealand Government is also considering introducing legislation aimed at aligning New Zealand more closely with the IAEA Code of Conduct on the Safety and Security of Radioactive Sources. This will update our existing Radiation Protection legislation, and further tighten the regulation of radioactive material.

[9] Sections 8 and 10 of the Terrorism Suppression Act 2002.

[10] "Related material" is defined under the UNSCR 1540 as "materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists which could be used for the design and development, production or use of nuclear, chemical and biological weapons by their means of delivery".

[11] Section 12 of the Radiation Protection Act 1965

[12] Amended pursuant to the Terrorism Suppression Amendment Act 2003.

(c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

- New Zealand does not currently have legislation expressly prohibiting trafficking and brokering in relation to WMD. We consider however that because we have legislation that prohibits the export or import of WMD in the first instance and export controls in place regulating strategic goods, that this would cover occurrences of illicit trafficking of WMD-related materials, given that such activities in New Zealand would necessarily involve importing or exporting the prohibited WMD goods.

- New Zealand has implemented controls on the export of "strategic goods" through the New Zealand Strategic Goods List. The items controlled are goods and technologies which are designed specifically for military use, and "dual-use" goods and technologies which are primarily for civilian use but which have significant military applications, whether they be in conventional weapons systems, or for the development of weapons of mass destruction. The export of goods on the Strategic Goods List is prohibited without the consent of the Secretary of Foreign Affairs and Trade. The New Zealand Strategic Goods List controls the export of goods regulated under the Australia Group, the Nuclear Suppliers Group, the Missile Technology Control Regime and the Wassenaar Arrangement and therefore serves to control related material as defined in these multilateral arrangements and agreements.

- The Strategic Goods List is implemented under the Customs and Excise Act 1996[13] through a Customs Export Prohibition Order.

[13] Section 56 of the Customs and Excise Act 1996.

**OP5** *Decides* that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of States Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons;

- New Zealand is a party to the Biological Weapons Convention, Chemical Weapons Convention and Nuclear Non-Proliferation Treaty, and has legislation in place which gives effect to these Conventions. New Zealand recently began a two-year term on the Executive Council of the Organization for the Prohibition of Chemical Weapons, and has just completed a term on the International Atomic Energy Agency's Board of Governors.

**OP6** *Recognizes* the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists;

- New Zealand has an effective national control list - the New Zealand Strategic Goods List. The items controlled are goods and technologies which are designed specifically for military use, and "dual-use" goods and technologies which are primarily for civilian use, but which have significant military applications, whether they be in conventional weapons systems, or for the development of weapons of mass destruction. The export of goods on the Strategic Goods List is prohibited without the consent of the Secretary of Foreign Affairs and Trade. The New Zealand Strategic Goods List controls the export of goods regulated under the Australia Group, the Nuclear Suppliers Group, the Missile Technology Control Regime and the Wassenaar Arrangement.

**OP7 *Recognizes* that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;**

- Together with Australia, New Zealand has already begun discussions with some Pacific Island states about this resolution, and we will be further discussing with them what assistance they would find useful in implementing it.

**OP8 *Calls upon* all States:**

**(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;**

**(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral nonproliferation treaties;**

**(c) To renew and fulfill their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;**

- New Zealand firmly supports the existing multilateral disarmament treaties, and the need to strengthen them through robust verification provisions. To build international confidence, it is vital that all states become members of these treaties.

- New Zealand is a party to the Biological Weapons Convention, Chemical Weapons Convention, the Comprehensive Test Ban Treaty and the Nuclear Non-Proliferation Treaty, and has legislation in place which gives effect to these Conventions.

- New Zealand recently began a two-year term on the Executive Council of the Organization for the Prohibition of Chemical Weapons, and has just completed a term on the International Atomic Energy Agency's Board of Governors. We particularly value the verification work of those agencies.

**(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;**

- The New Zealand Ministry of Foreign Affairs disseminates New Zealand obligations through the Ministry's website, which provides public information about New Zealand's disarmament obligations.
- Information is also disseminated through other New Zealand Government agencies, and through public speeches, conferences, and publications.
- A New Zealand expert was included in the panel which carried out the UN Study on Disarmament and Non-Proliferation Education. New Zealand's non-government organisations (NGOs) play a vital role in disseminating information about disarmament issues and New Zealand's obligations and the government has recently allocated some funding to assist them in carrying out the recommendations of the UN Study on Disarmament and Non-Proliferation Education.

**OP6 Calls upon all States to promote dialogue and cooperation on nonproliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery;**

- New Zealand has a strong record of supporting dialogue and cooperation on non-proliferation objectives. New Zealand has recently joined the G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction, allocating NZ$1.2 million to support the destruction of chemical weapons in Russia. We have made extra-budgetary contributions to the International Atomic Energy Agency's Nuclear Security Fund. New Zealand has expressed support for the principles of the Proliferation Security Initiative (PSI), which is intended to strengthen international cooperation against trafficking in WMD and their delivery systems.

- These practical yet essentially ad hoc measures and activities are however, in our view, in no way a substitute for the development of strong and effective multilateral instruments.

- In New Zealand's view, the most effective non-proliferation moves we could make collectively would be to ensure and enhance compliance with the NPT in all its aspects including nuclear disarmament, to bring the Comprehensive Nuclear Test Ban Treaty into force, and to negotiate a Fissile Material Cut-Off Treaty with strong verification provisions.

**OP10 Further to counter that threat, calls upon all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;**

- New Zealand will work with others to prevent illicit trafficking in nuclear, chemical, or biological weapons, their means of delivery, and related materials. The most effective way of doing this is through strong multilateral instruments with robust verification provisions.